



BRACKNELL FOREST COUNCIL

Code of Conduct Panel Hearing Procedure

November 2016

1. Pre Hearing Procedure

- 1.1 In order to allow the hearing to proceed fairly and efficiently, the Monitoring Officer may in appropriate cases use a pre -hearing procedure to:
- a) Identify which facts in the investigation report are agreed and which are in dispute;
 - b) Determine whether any fresh evidence not mentioned in the investigation report may be put before the hearing;
 - c) Determine whether documentary evidence which a party wishes to put before the hearing is admissible;
 - d) Establish whether the parties intend to attend; whether the parties intend to be represented in accordance with paragraph 2 and, if so, by whom; and the number and identity of witnesses to be called;
 - e) Determine whether the whole or any part of the hearing should be held in private;
 - f) Determine whether the whole or any part of the investigation report or other relevant documents should be withheld from the public.
- 1.2 The Monitoring Officer will notify the parties of the date, time and place for the hearing.

2. Rules of procedure

- 2.1 The Code of Conduct Panel consists of the Members of the Governance and Audit Committee.
- 2.2 The quorum for a meeting of the Hearing Panel is three voting members
- 2.3 The Independent Person's views must be sought and taken into consideration before the Code of Conduct Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Code of Conduct. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Panel in private) but in the event that this is not possible, may instead submit their views on the complaint to the Panel in writing.
- 2.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Code of Conduct Panel. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings of the Code of Conduct Panel where it is likely that confidential or exempt information will be disclosed.
- 2.5 All matters/issues before the Code of Conduct Panel will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.

- 2.7 Where the Subject Member fails to attend the Panel and where the Panel is not satisfied with their explanation for their absence from the hearing, it may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.

3. Right to be accompanied by a representative

- 3.1 The Subject Member may choose to be accompanied and/or represented at the Code of Conduct Panel by a fellow councillor, friend or colleague.

4. The conduct of the hearing

- 4.1 Subject to paragraph 4.2 below, the order of business will be as follows:

- (a) elect a Chairman;
- (b) apologies for absence;
- (c) declarations of interests;
- (d) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing
- (e) introduction by the Chairman, of members of the Panel, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (g) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

- 4.2 The Chairman may exercise their discretion and amend the order of business, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

- 4.3 The Code of Conduct Panel may adjourn the hearing at any time.

4.4 Presentation of the complaint

- (a) The Monitoring Officer, legal advisor or chairman may each make an introductory statement outlining the nature of the complaint and the purpose of the hearing, and the procedure to be followed.

- (b) The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted;
- (c) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (d) The Panel may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

4.5 Presentation of the Subject Member's case

- (a) The Subject Member or their representative presents their case and calls their witnesses;
- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Panel may question the Subject Member and any witnesses called by the Subject Member.

4.6 Summing up

- (a) The Investigating Officer sums up the complaint;
- (b) The Subject Member or their representative sums up their case.

4. Views/Submissions of the Independent Person

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Panel, there has been a breach of the Code of Conduct.

4.8 Deliberations of the Code of Conduct Panel

Deliberation in private

- (a) The Code of Conduct Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and from whom.

4.9 **Announcing decision on facts found**

- (a) The Code of Conduct Panel will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, the Panel considers that there has been a breach of the Code of Conduct

- (b) Where the Panel finds that there has been a breach of the Code of Conduct, the Chairman will invite the Independent Person, the Subject Member and the Monitoring Officer to make their representations as to whether or not any sanctions should be applied and, if so, what form they should take.
- (c) When deciding whether to apply one or more sanctions, the Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- What was the Subject Member's intention and did they know that they were failing to follow the Council's Code of Conduct?
- Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- What was the result/impact of failing to follow the Council's Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept that they were at fault?
- Did the Subject Member apologise to the relevant persons?
- Has the Subject Member previously been reprimanded or warned for similar misconduct?
- Has the Subject Member previously breached of the Council's Code of Conduct?
- Is there likely to be a repetition of the incident?

- (d) Having heard the representations of the Independent Person, the Subject Member and the Monitoring Officer on the application of sanctions, the Panel will adjourn and deliberate in private.

4.10 Formal Announcement of Decision

- (a) Where the complaint has a number of aspects, the Code of Conduct Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- (b) The Panel will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- (c) Having taken into account the representations of the Independent Person, the Subject Member and the Monitoring Officer's on the application of sanctions, the Panel will reconvene the hearing in public and the Chairman will announce:
- the Panel's decision as to whether or not the Subject Member has failed to comply with the Code of Conduct, and the principal reasons for the decision;
 - the sanctions (if any) to be applied;

- the recommendations (if any) to be made to the Council or Monitoring Officer;
- that there is no right of appeal against the Panel's decision and/or recommendations.

5. Range of possible sanctions

- The range of possible sanctions are as follows;

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| <ul style="list-style-type: none"> • The Panel recommending that the Council issue a formal Censure towards the Councillor/Co-opted member e.g. through a Motion at a Council meeting • The Panel publishing its decision by issuing a press release • The Panel reporting findings to Council for inclusion on Council agenda • The Panel recommending to the Councillor's group leader (or in the case of "ungrouped" members, recommend to Council or to Committees) that he/she be removed from any or all committees or sub-committees • The Panel recommending to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular portfolio responsibilities • The Panel recommending that the Councillor be removed from any or all outside appointments to which he/she has been appointed or nominated by the Leader of the Council • The Panel Instructing the Monitoring Officer to arrange appropriate training • The Panel requiring the Councillor/Co-opted Member to issue a written apology to the complainant in an open letter • The Panel referring the matter to the party whip in order that the Political group may consider what action to take under its own procedures |
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- The Code of Conduct Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- The Panel may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.